

ZONING RECLASSIFICATION APPLICATION

Harford County Board of Appeals

Bel Air, Maryland 21014

JUN 27 2007

Case No. 169

Date Filed 6/21/07

Hearing Date _____

Pre-Conf. _____

Receipt _____

Fee \$800.00

Shaded Area For Office Use Only

HARFORD COUNTY COUNCIL

Note

1. It is required that the applicant have a pre-filing conference with the Department of Planning and Zoning to determine the necessary additional information that will be required.
2. The burden of proof in any rezoning case shall be upon the Petitioner.
3. Any application in a zoning case and any amendment thereto shall contain specific allegations setting forth the basis for granting of the request.
4. Petition must contain names and addresses of all persons having legal or equitable interest in the property, including shareholders owning more than five percent (5%) of the stock in a corporation having any interest in the property, except those corporations listed and traded on a recognized stock exchange.
5. Application will be reviewed for completeness within ten (10) working days of submittal. Applicant will be notified by mail of completeness of application.

Petitioner

Name U S Hospitality LLC Phone Number Call Attorney

Address 2116 Emmorton Park Road, Edgewood MD 21040
Street Number Street State Zip Code

Property Owner Same as above Phone Number _____

Address _____
Street Number Street State Zip Code

Contract Purchaser N/A Phone Number _____

Address _____
Street Number Street State Zip Code

Attorney/Representative Kevin J. Mahoney, Esquire Phone Number 410-893-7500

Address 11 South Main Street, Bel Air MD 21014
Street Number Street State Zip Code

Land Description

Address and Location of Property (with nearest intersecting road) 1015 Pulaski Highway at the intersection of Route 152.

Subdivision _____ Lot Number _____ Acreage/Lot Size 14.51 AC Election District 01

Existing Zoning R1 Proposed Zoning B3 Acreage to be Rezoned 7.327 AC

Tax Map No. 65 Grid No. 3C Parcel 240 Deed Reference 1910/656

Critical Area Designation None Land Use Plan Designation High Intensity

Present Use and ALL improvements: Super 8 Motel and former Lakeside Motel. Modular building and two sheds.

Proposed Use (If for subdivision development, proposed number of lots, type of dwellings, and type of development.

Example: Conventional, Conventional with Open Space, Planned Residential Development) Hotel/Motel

Is the property designated a historic site, or does the property contain any designated or registered historic structures?

No If yes, describe: _____

Estimated Time Requested to Present Case: Two hours

Required Information To Be Attached

(Submit three (3) copies of each):

(a) The names and addresses of all persons, organizations, corporations, or groups owning land, any part of which lies within five hundred (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation.

(b) A statement of the grounds for the application including:

(1) A statement as to whether there is an allegation of mistake as to the existing zoning, and if so, the nature of the mistake and facts relied upon to support this allegation.

(2) A statement as to whether there is an

allegation of substantial change in the character of the neighborhood, and if so, a precise description of such alleged substantial change.

(c) A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion.

(d) A Concept Plan shall be submitted by the applicant at the time the application is filed. The Concept Plan shall illustrate the following:

(1) Location of site.

(2) Proposed nature and distribution of land uses, not including engineering drawings.

(3) Neighborhood (as defined by the Applicant).

REZONING JUSTIFICATION

1. Statement as to whether there is an allegation of mistake as to the exiting zoning, and if so, the nature of the mistake and facts relied upon to support this allegation.

During the 1997 Comprehensive Zoning, the County Council made several mistakes with respect to the zoning of the subject property.

First, the subject property is split-zoned. Approximately 7.19 acres of the property are already zoned B3. The remaining 7.327 acres are zoned R1. The zoning line runs through the existing commercial development of the old Lakeside Motel. Split zoning of properties is generally to be avoided from a planning perspective. In addition, running a split zoning line through the existing commercial development would certainly be a mistake.

In addition, zoning a portion of the subject property R1 is inconsistent with the Master Land Use Plan designation. The entire property is shown as "High Intensity" under the 1996 Master Land Use Plan designation. R1 zoning is not consistent with the high intensity designation. This designation has carried through to the 2005 Master Land Use Plan.

Third, the R1 portion of the property is severely impacted by wetlands and their attendant buffers. Development of the property for residential uses would require that access to the property be gained through the existing commercial section of the property or through adjoining properties which are zoned residential. The environmental constraints of the property would preclude the possibility of connecting to adjoining residential properties.

Lastly, the Base Realignment and Closure (BRAC) process will result in thousands of new jobs to Harford County, particularly the Aberdeen Proving Grounds Edgewood Arsenal facility. Expanded hotel opportunities will be necessary in order to accommodate visitors to the Harford County area.

All of these facts should have been considered by the Harford County Council in determining the proper zoning classification of the property during the 1997 Comprehensive Zoning. Because these facts were not properly considered by the Council, a mistake in the zoning of the property exists. The proper correction of the mistake in zoning is to rezone the R1 portion of the property to B3.

2. A statement as to whether there is allegations of substantial change in the character of the neighborhood and if so, a precise description of alleged substantial change.

A change has occurred in the character of the neighborhood since the 1997 Comprehensive Zoning. The BRAC process will bring thousands of new jobs to Harford County, particularly to the Aberdeen Proving Ground and Edgewood Arsenal areas. This shift of government jobs will require expanded hotel opportunities for visitors to Harford County supporting the various businesses and operations located on or around the Base facilities. The BRAC process is a significant change in the character of the neighborhood since the 1997 Comprehensive Zoning. The subject property is ideally suited for rezoning in order to accommodate additional hotel opportunities.

- (4) All surrounding zoning.
- (5) Proposed public or private capital improvements.
- (e) Previous individual rezonings and recommendation since the effective date of the Comprehensive Rezoning, within the neighborhood of the petitioned area, their case numbers, dates, and decisions.
- (f) Environmental features map indicating woods, fields, streams, floodplains, non-tidal wetlands, etc.
- (g) Property deed and a boundary survey prepared and sealed by a registered surveyor, including dimension of area requested to be rezoned if only a portion of the property.
- (h) Private restrictions or covenants, if any, applicable to subject parcel.
- (i) Any agreements with individuals or associations in the neighborhood related to the proposed zoning shall be submitted.
- (j) Availability of public water and sewer.

Additional Information as Required by the Department of Planning and Zoning

- (a) Existing and proposed libraries, parks, schools, fire and police departments.
- (b) Demonstration of compatibility of the proposed use with existing and proposed development for the area.
- (c) Traffic impact study.
- (d) Economic and Environmental impact studies.
- (e) Estimated population for existing and proposed petitioned area and neighborhood, as defined.
- (f) Soils analysis.
- (g) Aerial photograph.

CASE 169 MAP 65 TYPE Rezoning

ELECTION DISTRICT 01 LOCATION 1015 Pulaski Highway

BY US Hospitality LLC

Appealed because a rezoning pursuant to Section 267-12A of the Harford County Code to rezone 7.327 acres from a R1 District to a B3 District requires approval by the Board.

I/We do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavit are true and correct to the best of my/our knowledge, information, and belief.

U S Hospitality LLC
by

Signature of Applicant/Owner
Dan Patel

5/29/07
Date

Witness

5/29/07
Date

Signature of Contract Purchaser/Owner . Date

Signature of Attorney/Representative
Kevin J. Mahoney, Esquire

Gessner, Snee, Mahoney & Lutche, P.A.

Director of Planning and Zoning

5/29/07
Date

Witness

Date

Witness

Date

Zoning Staff

Date

DAVID R. CRAIG
HARFORD COUNTY EXECUTIVE

LORRAINE COSTELLO
DIRECTOR OF ADMINISTRATION



C. PETE GUTWALD
DIRECTOR OF PLANNING & ZONING

HARFORD COUNTY GOVERNMENT

Department of Planning and Zoning

September 17, 2007

STAFF REPORT

BOARD OF APPEALS CASE NO. 169

APPLICANT/OWNER: US Hospitality, LLC
2116 Emmorton Park Road
Baltimore, MD 21201

REPRESENTATIVE: John J. Gessner, Esquire
Gessner, Snee, Mahoney and Lutche, PA,
11 South Main Street, PO Box 1776,
Bel Air, Maryland 21014

LOCATION: SW corner of MD Route 152 and
US Route 40, Edgewood, MD
Tax Map: 65 / Grid: 3C / Parcel: 240
Election District: First (1)

ACREAGE: 14.513 acres

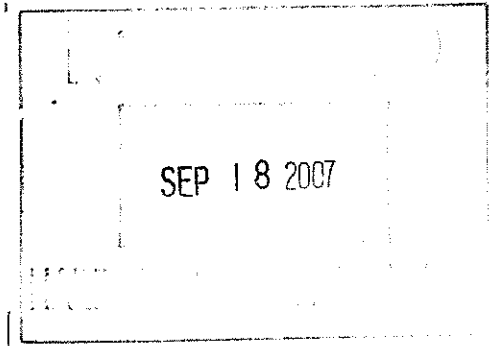
ACREAGE TO BE REZONED: 7.327 acres

EXISTING ZONING: B3/General Business District and R1/Urban Residential
District

PROPOSED ZONING: B3/General Business District

DATE FILED: June 21, 2007

HEARING DATE: September 26, 2007



Preserving Harford's past; promoting Harford's future

STAFF REPORT

Board of Appeals Case Number 169

US Hospitality, LLC

Page 2 of 6

APPLICANT'S REQUEST and JUSTIFICATION:

See ATTACHMENT 1.

LAND USE and ZONING ANALYSIS:

Location and Description of Neighborhood:

The Applicant's property is located on the southwest corner of Pulaski Highway (US Route 40) and MD Route 152 (Magnolia Road). A location map and a copy of the Applicant's site plan are enclosed with the report (Attachments 2 and 3).

The Applicant has submitted a map delineating their suggested neighborhood with the application (Attachment 4). The neighborhood defined by the Applicant generally conforms to the neighborhood defined by the Department. The Department defines the neighborhood as all those properties south of the CSX Railroad, east of Joppa Road, west of Magnolia Road (MD Route 152) and north of the intersection of Joppa Road and Trimble Road. Enclosed with this report is a map showing the neighborhood as defined by the Department (Attachment 5).

Land Use – Master Plan:

The subject property is located within the Development Envelope on the southwest corner of US Route 40 and MD Route 152. The predominant land use designations in this area of the County are Low and High Intensity. The Natural Features Map reflects Stream Systems. The subject property is designated as High Intensity which is defined by the 2004 Master Plan as:

High Intensity – Areas within the Development Envelope where residential development occurs at a density greater than 7.0 dwelling units per acre. Major retail commercial centers and highway-related businesses, such as automobile dealerships and home improvement centers, are examples of some of the most intensive uses associated with this designation.

Enclosed with the report are copies of portions of the 2004 Land Use Map and the Natural Features Map (Attachments 6 and 7).

Land Use – Existing:

The existing land uses generally conform to the intent of the Master Plan. The area contains a mix of uses including single-family dwellings and commercial/industrial uses. Some of the commercial uses in the area include small individual retail stores, used car dealers, recreational vehicles sales, motor vehicle repair shops and gas stations/convenience stores. The future Oak Grove/Stancill's single-family residential development will be located on the property that abuts

STAFF REPORT

Board of Appeals Case Number 169

US Hospitality, LLC

Page 3 of 6

the subject property to the east, west and south. A total of 219 single-family residential lots have been approved and recorded in the Land Records.

The subject property is irregularly shaped, contains 14.513 acres and has approximately 430-feet of road frontage. The subject property is currently improved with several motel buildings, accessory buildings, and parking. The topography within this area ranges from rolling to steep, especially near the stream valleys. The subject property is gently sloping from the north to the south. There is a large pond on the subject property that was created from an abandoned quarry. There are also two streams that traverse the subject property. Enclosed with the report are a copy of the topography map, aerial photograph, and site photographs (Attachments 8, 9 and 10).

Zoning and Zoning History:

Zoning:

The zoning classifications in the area are consistent with the 2004 Master Plan as well as the existing land uses. Residential zoning in the area is R1/Urban Residential District. Commercial zoning in the area includes B3/General Business District and CI/Commercial Industrial District. There are also several parcels zoned GI/General Industrial District on the north side of US Route 40. The subject property is split zoned B3/General Business District and R1/Urban Residential District as shown on the enclosed copy of the zoning map (Attachment 11). Approximately 7.19+/- acres of the overall tract is zoned B3/Neighborhood Business District and 7.327+/- acres is zoned R1/Urban Residential District.

Zoning History:

1957 Comprehensive Zoning Review: In 1957 the subject property was split zoned B3/General Business District and AG/Agricultural District (Attachment 12).

1982 Comprehensive Zoning Review: During the 1982 Comprehensive Zoning Review the portion of the subject property zoned AG/Agricultural was rezoned to R1/Urban Residential District (Attachment 13).

1989 Comprehensive Zoning Review: In 1989 the subject property remained split zoned B3/General Business District and R1/Urban Residential District (Attachment 14).

1997 Comprehensive Zoning Review: In 1997 the subject property remained split zoned B3/General Business District and R1/Urban Residential District (Attachment 15).

2005 Comprehensive Zoning Review: The subject property was not an issue during the 2005 Comprehensive Zoning Review.

STAFF REPORT

Board of Appeals Case Number 169

US Hospitality, LLC

Page 4 of 6

BASIS FOR INDIVIDUAL REZONING REQUEST:

Under Maryland case law, the burden of proof lies with the Applicant to provide information that there has been a substantial change in the overall character of the neighborhood or that the County made a mistake during the last comprehensive zoning review process. It should be noted that the courts have stated that any argument for change cannot be based on existing changes that were anticipated during the last comprehensive review.

Substantial Change Argument:

The Applicant states that "A change has occurred in the character of the neighborhood since the 1997 Comprehensive Zoning. The BRAC process will bring thousands of new jobs to Harford County, particularly to the Aberdeen Proving Ground and Edgewood Arsenal areas. This shift of government jobs will require expanded hotel opportunities for visitors to Harford County supporting the various businesses and operations located on or around the Base facilities. The BRAC process is a significant change in the character of the neighborhood since the 1997 Comprehensive Zoning. The subject property is ideally suited for rezoning in order to accommodate additional hotel opportunities."

The Department of Planning and Zoning is aware of BRAC and has been actively involved with State, Federal and Military officials in planning for the relocation process. This Department, however, disagrees with the Applicant's argument that the BRAC process has caused a substantial change in the subject neighborhood.

Mistake:

The Applicant states that "During the 1997 Comprehensive Zoning, the County Council made several mistakes with respect to the zoning of the subject property."

"First, the subject property is split-zoned. Approximately 7.19 acres of the property are already zoned B3. The remaining 7.327 acres are zoned R1. The zoning line runs through the existing commercial development of the old Lakeside Motel. Split zoning of properties is generally to be avoided from a planning perspective. In addition, running a split zoning line through the existing commercial development would certainly be a mistake."

"In addition, zoning a portion of the subject property R1 is inconsistent with the Master Land Use Plan designation. The entire property is shown as "High Intensity" under the 1996 Master Land Use Plan designation. R1 zoning is not consistent with the high intensity designation. This designation has carried through to the 2005 Master Land Use Plan."

"Third, the R1 portion of the property is severely impacted by wetlands and their attendant buffers. Development of the property for residential uses would require that access to the property be gained through the existing commercial section of the property or through adjoining

STAFF REPORT

Board of Appeals Case Number 169

US Hospitality, LLC

Page 5 of 6

properties which are zoned residential. The environmental constraints of the property would preclude the possibility of connecting to adjoining residential properties.”

“Lastly, the Base Realignment and Closure (BRAC) process will result in thousands of new jobs to Harford County, particularly the Aberdeen Proving Grounds Edgewood Arsenal facility. Expanded hotel opportunities will be necessary in order to accommodate visitors to the Harford County area.”

“All of these facts should have been considered by the Harford County Council in determining the proper zoning classification of the property during the 1997 Comprehensive Zoning. Because these facts were not properly considered by the Council, a mistake in the zoning of the property exists. The proper correction of the mistake in zoning is to rezone the R1 portion of the property to B3.”

The Department agrees that a mistake has occurred in the zoning of the property. A motel has been operated from the subject property since at least 1957. During the implementation of zoning in Harford County in 1957, the County split zoned the subject property B3/General Business District and AG/Agricultural District. During the 1982 Comprehensive Rezoning, the AG/Agricultural District portion of the subject property was rezoned to R1/Urban Residential District.

Motels are permitted as a matter of right in the B3/General Business District. However, the zoning line bisects one of the buildings and a second building is located entirely within the R1/Urban Residential District. The Department believes that the County Council would not have located the zoning line through the building if better mapping techniques were available in 1957 and the exact location of the buildings was known. The location of the zoning line in 1957 rendered the motel a nonconforming use since motels are not permitted in the R1/Urban Residential District. The nonconforming use of the property as a motel has continued uninterrupted since 1957. However, the Applicant cannot expand the nonconforming use or redevelop the property for a new motel building within the R1/Urban Residential District as shown on their concept plan.

The requested B3/General Business District zoning is appropriate for the subject property and is consistent with the 2004 Land Use Plan. The entire property is designated as High Intensity. The rezoning of the subject property will be in conformance with the Land Use Plan. Additionally, the rezoning of the R1/Urban Residential District portion of the subject property to B3/General Business District will bring the motel use in conformance with the Zoning Code and allow the redevelopment and expansion of the old motel. Therefore, the Department recommends that the entire property be rezoned to B3/General Business District. Rezoning the entire property B3/General Business District would eliminate the current split zoning of the property and provide the most appropriate zoning configuration.

STAFF REPORT

Board of Appeals Case Number 169

US Hospitality, LLC

Page 6 of 6

ANALYSIS OF INDIVIDUAL ZONING REQUEST:

Conformance with the Master Plan and Land Use Element Plan:

The proposed rezoning is in conformance with the intent of the 2004 Master Plan. The Land Use Plan shows the area designated as High Intensity.

Impact of Requested Zoning:

The requested rezoning would not adversely impact the neighborhood.

COMMENTS FROM ADVISORY GROUPS:

Historic Preservation Issues:

There are no historic sites on the property. No preservation easements impact the property.

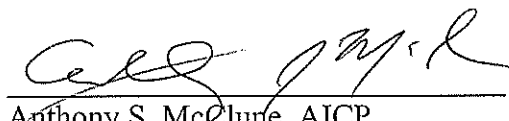
Planning Advisory Board:

The Planning Advisory Board (PAB) reviewed the request at their meeting on September 12, 2007. The PAB voted 3-0 to recommend that the requested change in zoning be approved (Attachment 16).

RECOMMENDATION and or SUGGESTED CONDITIONS:

The Department of Planning and Zoning recommends that the request to rezone the portion of the subject property zoned R1/Urban Residential District to B3/General Business District be approved.


Shane Grimm, AICP
Chief, Site Plan & Building
Permits Review


Anthony S. McClune, AICP
Deputy Director, Planning and Zoning

SPG/ASM/jf